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March 6, 2020

Melanie A. Bachman  
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## **BY EMAIL PDF AND UPS DELIVERY**

**Re: Petition No. 983 – Town of Colebrook's Objection to D&M Plan  
Modification**

Dear Ms. Bachman,

Enclosed for filing please find an original and 15 copies of the Town of Colebrook's Objection to BNE Energy, Inc.'s Development and Management Plan Modification submitted on January 9, 2020. Copies of this letter and the Town's Objection are also being served on the Council's Service List.

Very truly yours,



Patrick E. Power

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**Petition of BNE Energy Inc. for a  
Declaratory Ruling that no Certificate of  
Environmental Compatibility and Public Need  
is Required for the Construction, Maintenance,  
and Operation of a 4.8 MW Wind Renewable  
Generating Facility Located on Flagg Hill Road  
in Colebrook, Connecticut (“Wind Colebrook South”).**

**Petition No. 983**

**March 6, 2020**

**TOWN OF COLEBROOK’S OBJECTION TO BNE ENERGY, INC.’S REQUEST FOR  
APPROVAL OF DEVELOPMENT AND MANAGEMENT PLAN MODIFICATION**

The Town of Colebrook, Connecticut (“Town”) hereby objects to BNE ENERGY, INC.’S DEVELOPMENT AND MANAGEMENT (“D&M”) PLAN MODIFICATION dated January 9, 2020 (“BNE’s Request”), as modified by BNE’s February 21, 2020, February 5, 2020, March 2, 2020 and March 4, 2020 responses to interrogatories issued by the Council, and asks the Council to deny BNE’s Request.

All of the Town’s objections to BNE’s Request are thoroughly and persuasively covered in the OBJECTION TO BNE ENERGY INC.’S REQUEST FOR APPROVAL OF DEVELOPMENT AND MANAGEMENT PLAN MODIFICATION dated March 4, 2020 submitted by FairWindCT, Inc. (“FWCT”). No useful purpose would be served by repeating and discussing all of those objections in detail here. Accordingly, the Town adopts the objections and arguments set forth in FWCT’s Objection and incorporates them herein as part of the Town’s Objection.

As clearly set forth in FWCT’s Objection, BNE’s Request does not involve simply changing the location of a turbine. It involves the placement of a new and much taller wind turbine with longer blades and a higher nameplate capacity on two new parcels of land, 45 and 53 Flagg Hill Road, comprising approximately 37 acres. BNE’s proposal would increase the size

of its existing 79.4-acre site approved by the Council in 2011 by approximately 47%. Neither the larger turbine nor the two new parcels of land have ever been proposed to or reviewed and analyzed by the Council. Thus, as correctly stated in FWCT's Objection, BNE's Request in fact proposes a new facility on a new site, which involves new abutters and requires new environmental, wetland, setback, safety, visual and noise analyses and studies. BNE's representation that it intends to merge 45 and 53 Flagg Hill Road with 29 Flagg Hill Road simply involves the issue of legal ownership, and changes absolutely nothing with respect to FWCT's Objections or the comments in this Objection, all of which relate to the physical characteristics of the new facility and site.

BNE's attempt to characterize its Request as a D & M Plan "modification" is a blatant and transparent attempt to make an "end-run" around the wind regulations and the due process rights of abutters and interested parties, by having the current Request treated as part of a proceeding and contested case that was decided by the Council almost 9 years ago, before the wind regulations took effect. By proceeding in this manner, BNE presumably seeks to: (1) avoid the need for its new facility and new site to comply with the wind regulations; and (2) deprive abutters and other interested parties, including new abutters who had no opportunity to be heard in the original proceeding, of any opportunity to be heard with respect to BNE's new proposal, and of any right to appeal the Council's decision on the proposal.

As also correctly noted in FWCT's Objection, because BNE's Request proposes a new facility on a new site, the Request raises matters which are outside the Council's continuing jurisdiction over BNE's original petition filed in December of 2010. Accordingly, BNE's new proposal must be processed by the Council as a new petition, subject to the current wind regulations and pursuant to all of the procedural requirements, safeguards of the rights of

interested parties, and substantive analyses, reviews and input which apply to new petitions. Therefore, the Council lacks jurisdiction to process BNE's Request as a simple D & M Plan modification.

The conclusions that BNE's Request should not be processed by the Council as a D & M Plan modification, and that BNE should be required to submit a new petition for a declaratory ruling for the new facility on the new site, are supported by the fact that The Nature Conservancy, the Grant Swamp Group, and Julia and Jonathan Gold have already requested party and intervenor status and have sought to participate and have input in the Council's review and processing of BNE's Request. The fact that such proposed parties and intervenors have new concerns and issues arising out of the new facility and new site being proposed by BNE strongly indicates that the Council should provide an opportunity for their concerns and issues to be fully aired and analyzed. However, their concerns have been summarily dismissed by letters from the Council's Executive Director stating that their Requests for Party Status and CEPA Intervention are "moot" because the evidentiary record and public hearings for Petition No. 983 closed on April 26, 2011. Requiring BNE to submit a new petition for a declaratory ruling for the new facility and new site being proposed would provide an opportunity for persons and entities whose interests are newly affected by BNE's current proposal to have their concerns heard and considered by the Council.

For the reasons stated above, the Town objects to BNE's Request, and urges the Council to deny the Request and require BNE to submit a new petition for a declaratory ruling for the new facility and new site which are the subjects of its current Request.

TOWN OF COLEBROOK

By: 

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**CERTIFICATION**

I hereby certify that a copy of the foregoing document was served on the following service list on March 6, 2020 by the method of service set forth on the Siting Council's Service List for each of the persons and entities set forth below:

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